International Brotherhood of Electrical Workers, Local 429, and its agent Nashville Electrical Joint Apprenticeship Training Committee *and* Danny Page. Case 26–CB–4240

June 30, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND KIRSANOW

On April 15, 2003, Administrative Law Judge Keltner W. Locke issued the attached bench decision. The General Counsel filed exceptions and a supporting brief, and the Nashville Electrical Joint Apprenticeship Training Committee (the JATC or the Committee) filed cross-exceptions. The JATC and the International Brotherhood of Electrical Workers, Local 429 (the Union) filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to adopt the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The judge dismissed the complaint, which alleged violations of Section 8(b)(1)(A) and (2) of the Act based on actions taken by the JATC against apprentice Daniel Page because he was delinquent in his dues and because of his antiunion views. Specifically, the JATC attempted to require Page's employer, Elec Tech, to acquiesce in an attempt to rotate Page to another employer, a practice generally viewed as disruptive and hence undesirable by apprentices and their employers. The complaint also challenged the JATC's discipline of Page for his ostensible dishonesty towards, and failure to cooperate with, the Committee with regard to this attempted rotation, for which the JATC imposed a 6-month delay in Page's completion of his training and promotion to a higher salary level. The judge found that the JATC was not the Union's agent and therefore that the Union could not be held liable for these actions. In addition, the judge found that, even assuming agency, the JATC's actions were reasonable and "the record contain[ed] very little evidence to suggest unlawful motivation." As explained below, we reverse the judge on both points, finding that the JATC acted as the Union's agent and that its actions violated Section 8(b)(1)(A) and (2) of the Act.

I. FACTUAL BACKGROUND

The Union has a collective-bargaining agreement with the Middle Tennessee Chapter of the National Electrical Contractors Association, a multiemployer association (the Employer Association). Under the agreement, the Union and the Employer Association created the JATC to oversee the training and hiring out of apprentice electricians.[2] Each party appoints an equal number of representatives to the JATC. Program Training Coordinator Elbert Carter participates in the Committee's regular meetings although he is not a voting member.

The JATC formulates apprenticeship and training standards that must be approved by the United States Department of Labor, Bureau of Apprenticeship and Training (BAT). Under the JATC standards, apprentices complete a minimum of 8000 hours of reasonably continuous supervised on-the-job training as well as 200 hours of related classroom training. The JATC may rotate apprentices from one participating employer to another to diversify their on-the-job training experience. However, the record suggests that the JATC did not rotate apprentices on a regular basis in part because this practice was opposed by apprentices and employers as disruptive to ongoing projects.[3] Apprentices need not join or pay dues or fees to the Union in order to work for employers participating in the JATC program.

Charging Party Daniel Page was a participant in the JATC program and a union member. He was disciplined for absenteeism and then discharged by two separate electrical contractors to whom he was assigned for on-the-job training. As a result, the JATC terminated him from the program in 1997. In mid-2000 or 2001,[4] how-

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and, except as otherwise discussed herein, find no basis for reversing his findings.

[2] The apprenticeship program is funded by a local apprenticeship and training trust fund, to which all participating employers contribute.

[3] As a result of a BAT audit in 2001 that criticized the JATC program for failing to have a systematic rotation policy, the JATC considered adoption of such a policy. However, because of opposition from the Employer Association and the JATC's successful proposal of alternate changes to satisfy BAT standards, the policy was never implemented.

[4] There is some uncertainty as to exactly when Page was readmitted to the apprenticeship program. We find it unnecessary to resolve this conflicting testimony, however, as the timing of Page's readmission has no bearing on the outcome of the case.

ever, Training Coordinator Carter suggested that Page seek readmission to the program in order to work for his father's company, Elec Tech, which had a collective–bargaining agreement with the Union that permitted it to employ only apprentices enrolled in the JATC program. The JATC readmitted Page, and he began working for Elec Tech.

Page became delinquent in his payment of dues at some point after his readmission to the JATC program. In April or May 2001, Carter called Page into his office and, in the presence of Union Representative and JATC member Gerald Grant and Union Business Manager and JATC member Jerry Lee, raised the subject of Page's dues delinquency.[5] (Carter received regular updates regarding dues-delinquent apprentices from the Union and pursued apprentices not in good standing by sending out form letters and through personal conversations.) Carter warned Page that if he failed to pay his dues, he would lose the benefits of union membership. With his father's assistance, Page paid his dues through November 2001.

On July 8, 2002, Page's dues payments were late by over 6 months. Union Representative Mike Bearden contacted Page's father to discuss the situation. The next day, Page attempted unsuccessfully to contact Bearden. On July 10, the JATC called a special meeting at which Training Director Carter proposed that Page should be rotated to a different employer for on-the-job training to ensure that he could work successfully in environments other than his father's shop. The Committee adopted the proposal.[6] On July 11, Carter sent letters to Page and to Elec Tech informing them that Page was being removed from his employment at Elec Tech. That same day, Page spoke with Union Representative and JATC member John Hooper and announced that he was no longer interested in being a member of the Union.[7]

The July 11 rotation letter instructed Page to report for a drug screening and then contact Carter's office to obtain his reassignment. Page reported for drug screening as instructed, but did not contact the office regarding his new assignment. Instead, his father sent a letter to Carter stating his disagreement with the rotation decision and requesting a postponement pending further discussion. Carter refused to grant a postponement, but indicated that Page and his father could discuss the issue with the Committee at its next meeting on July 24.

At the July 24 meeting, Page's father and other Elec Tech representatives explained their objection to the rotation decision. The Committee voted unanimously to rescind the rotation. When the Committee spoke with Page at the meeting, however, he informed them that he had contacted NLRB representative Stacey Smith and BAT State Director Nat Brown and had been advised that he was not required to respond to the Committee's questions. Carter ended the meeting and contacted Smith and Brown, who both denied that they had made the statements Page attributed to them. At a meeting the following day, which Brown attended, Page responded to the Committee's questions.

Nevertheless, at a subsequent meeting on September 4, 2002, the Committee decided to discipline Page, allegedly for failing to cooperate with and lying to the Committee in the course of its consideration of the rotation decision. As punishment, the Committee voted to delay Page's next scheduled pay increase and his advancement to journeyman electrician status by 6 months. Shortly thereafter, the Committee disciplined another apprentice, Robert Collier, for failing to contact the office for an assignment and for lying, but issued only a stern warning for his misconduct.

II. DISCUSSION

A. Agency Issue

The Union may not be held liable for the JATC's actions against Page unless the JATC is found to be the Union's agent. The judge found that the JATC was not the Union's agent but cited no case law to support his conclusion. In exceptions, the General Counsel argues that this case is governed by the Board's decision in *Plumbers Local 375*, 228 NLRB 1191, 1195 (1977), in which the Board found that a joint apprenticeship training committee was an agent of the union and the employer who jointly created it through their collective-bargaining agreement. See also *Iron Workers Local 15*, 298 NLRB 445, 462–463 (1990), enf. denied in part and remanded in part 929 F.2d 910 (2d Cir. 1991). We agree with the General Counsel. As in *Plumbers Local 375* and *Iron Workers Local 15*, the JATC in this case is created by and operated in accordance with the parties' collective-bargaining agreement. The contract delegates to the JATC complete authority for selecting and training apprentices as well as assigning them work. Under the parties' agreement, the JATC is charged with "the train-

[5] The judge places this conversation in 2002. However, the record evidence suggests that the actual date was 2001.

[6] Two union representatives, John Hooper and Gerald Grant, and one Employer Association representative, Bert Noll, attended the meeting and voted to approve the rotation proposal.

[7] The judge found that the timing of the Committee's decision to rotate Page was suspicious in relation to Page's announcement to Hooper that he wished to resign his union membership. However, whereas the judge found that Page's conversation with Hooper occurred the same day as the rotation meeting, the record establishes that the rotation meeting actually occurred the day before Page's resignation. Although we correct the judge's erroneous factual finding, we nevertheless agree with the judge that the timing here is suspect, for reasons explained below.

ing of apprentices, journeymen, installers, technicians, and all others . . .” according to “[t]he local apprenticeship standards . . . in conformance with national guidelines, standards, and polices,” and has “full authority for issuing all job-training assignments and for transferring apprentices from one employer to another,” with notification to the Union of “all job training assignments.” In performing these functions, aimed at creating a qualified pool of electrical workers for the industry, the members of the JATC are performing collective-bargaining duties. *Iron Workers Local 15*, 298 NLRB at 462–463.

In its answering brief, the JATC argues that the case is governed by the Supreme Court’s decision in *NLRB v. Amax Coal Co.*, 453 U.S. 322 (1981). We disagree. In *Amax Coal*, the Court held that employer-appointed trustees of a jointly administered trust fund could not be deemed collective-bargaining representatives of the employer for purposes of Section 8(b)(1)(B) of the Act because that role was inconsistent with their fiduciary duty to the trust beneficiaries. Although the JATC representatives in this case also serve as trustees of the Apprenticeship and Training Trust Fund and may well act as fiduciaries in that capacity, the decisions at issue here involve the training and discipline of apprentices, functions that fall exclusively to the JATC. The Committee members’ role as fiduciaries in administering the Trust Fund does not undercut their agency function in their capacity as JATC members. See *Asbestos Workers Local 27 (Master Insulators)*, 263 NLRB 922, 922–923 (1982). In that case, the Board held that the joint apprenticeship committee members were 8(b)(1)(B) representatives of the employer. The Board distinguished these committee members from the trustees of a fund, whose trustees owe a fiduciary duty to the beneficiaries of the fund. By contrast, the JATC has the responsibility of administering contractual provisions on behalf of the employers and the Union.

We conclude that the Committee acts as an agent of the Union, and within the scope of its authority as defined by the parties’ collective-bargaining agreement, in administering the joint apprenticeship program.

B. Alleged Violations of Section 8(b)(1)(A) and (2)

Although the judge found that the Committee was not the Union’s agent, he also concluded that the record did not, in any case, support a finding that the Committee’s attempt to rotate Page and its decision to discipline him were unlawfully motivated. In so finding, however, the judge failed to consider substantial record evidence from which unlawful motive must be inferred. For the reasons explained below, we conclude that a preponderance of the evidence establishes that the Committee’s actions were motivated by Page’s dues delinquency and his antiunion views, in violation of Section 8(b)(1)(A) and (2).

Absent a valid union-security clause, a union violates Section 8(b)(1)(A) and (2) by taking an action that adversely affects an employee’s employment or by causing or attempting to cause an employer to take such action because the employee failed to pay his union dues.[8] Here, there is no union-security clause in the parties’ collective-bargaining agreement. Thus, the JATC’s attempt to require Elec Tech to rotate Page and its imposition of a 6-month delay on Page’s completion of the apprenticeship program and his attainment of the next salary level, if motivated by his dues delinquency, would be unlawful.[9] In addition, the JATC acted because of Page’s expression of antiunion views.

The Board applies the analytical framework laid out in *Wright Line*[10] to cases in which a union is alleged to have discriminated against or attempted to cause an employer to discriminate against an employee in violation of Section 8(b)(1)(A) and (2) of the Act. See, e.g., *Oil Workers Local 3-495 (Hercules, Inc.)*, 314 NLRB 385, 385 (1994) (failing to file grievances); *Town & Country Supermarkets*, 340 NLRB 1410, 1411 (2004) (seeking suspension of dissident). Applying the *Wright Line* analysis here, the General Counsel has the initial burden to establish that the Respondents knew about Page’s dues delinquency and antiunion views, and that this information was a motivating factor in their attempted rotation and ultimate disciplining of Page. If the General Counsel meets this initial burden, the burden shifts to the Respondents to rebut the finding of unlawful motive by showing that they would have made the same decisions even absent Page’s dues delinquency and antiunionism. *Wright*

[8] Sec. 8(b)(1)(A) and (2) prohibit a labor organization or its agents from “restrain[ing] or coerc[ing] employees in the exercise of the rights guaranteed in section 7” and from “caus[ing] or attempt[ing] to cause an employer to discriminate against an employee in violation of subsection a(3).” See *Mailers Union Local No. 7 (Kansas City Star Co.)*, 262 NLRB 851, 854–855 (1982) (union that refused member overtime assignments because of his dues delinquency violated 8(b)(1)(A) and (2)); *Stage Employees IATSE Local 665 (Columbia Picture)*, 268 NLRB 570, 571 (1984) (union that sought removal of a member from job for which he had been requested by the employer due to his dues delinquency violated Sec. 8(b)(1)(A) and (2)), enfd. 751 F.2d 390 (9th Cir. 1984).

[9] In the cases cited above, *Stage Employees IATSE Local 665 (Columbia Picture)*, 268 NLRB at 571, and *Mailers Union Local 7 (Kansas City Star Co.)*, 262 NLRB at 854–855, in which the Board found actions taken by a union against a member for failure to pay dues unlawful, the Board did not apply a *Wright Line* analysis (see discussion infra). In those cases, there was direct, undisputed evidence that the adverse actions were motivated by the affected members’ dues delinquency, and there was no evidence of dual motive.

[10] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983).

Line, 251 NLRB at 1090–1091. However, if the evidence of unlawful motive includes a showing that the Respondents' stated reasons for their actions were pretextual—that is, false or not in fact relied upon—then the Respondents fail by definition to rebut the finding of unlawful motive. *Limestone Apparel Corp.*, 255 NLRB 722, 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982).

1. Attempted rotation

Although the judge did not explicitly conduct a *Wright Line* analysis, he found that the General Counsel failed to show that the Committee's attempt to remove Page from his employment at Elec Tech in order to rotate him was unlawfully motivated. The judge concluded, largely on the basis of unexplained credibility determinations, that the Committee members "were not motivated at all by Page's nonpayment of union dues or by Page's status as a Union member or nonmember." Thus, he credited the Committee members' testimony that dues had nothing to do with their decisions and disregarded, as sarcastic, a statement by Committee member Bert Noll during a meeting that the rotation decision was about dues. The judge also found that the Committee's stated reason for its action—to ensure that Page could work with other employers—was legitimate, particularly given Page's history. Finally, the judge found inherently implausible any inference that the Committee's decision was intended to coerce Page into paying his dues because the Union refused to accept payment from Page's father when it contacted him about his son's delinquency.[11]

Upon careful review of the record, we find that direct and circumstantial evidence establishes that the Committee's attempt to require Elec Tech to rotate Page was unlawfully motivated and that the Committee has not shown that it would have done so absent Page's dues delinquency and antiunionism. We rely in part on Employer Association Representative Noll's admission, which we find, contrary to the judge, was not sarcastic, and which was not contemporaneously disavowed by any union representative. In addition, we rely on the timing of the attempted rotation and the evidence that the stated reason for the action—the perceived need for Page to demonstrate the ability to work for employers other than his father—was a pretext. See, e.g., *Techno Construction Corp.*, 333 NLRB 75 (2001); *Dauman Pallet, Inc.*, 314 NLRB 185, 185 (1994).

The judge did not explain his basis for accepting the self-serving assertions of the Committee members on the ultimate issue, the Committee's motivation in attempting to have Page transferred to a different employer. Such self-serving declarations regarding motive are certainly not conclusive. See *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966).[12] That is particularly true here, given several Committee members' admissions that Noll stated at a meeting that the decision was "about dues." According to Training Coordinator Carter, who was present at the meeting where the statement was made, Noll said that the rotation decision was "about dues and other agreements and understandings [Page] has broken." Carter testified that, after being asked repeatedly by Page's father whether the rotation was about dues, "[Noll] blurted out, 'Hell yes, it's about [dues].'" Although Noll testified that he did not recall precisely what he said, he admitted that the atmosphere was tense and that he probably had replied to Page's father's questioning. None of the witnesses who observed Noll make the comment described it as sarcastic.

In asserting that Page's dues delinquency did not motivate the JATC's decisions, the Respondents argue, inter alia, that there is no evidence that the Committee knew of Page's dues delinquency at the time of the rotation attempt. But Union Business Agent and Representative Gerald Grant, one of the three voting members who decided to rotate Page at the July 9 meeting, testified that he knew of Page's dues delinquency at the time. Noll was also a voting member, and although he testified that he could not recall whether he knew, his admission at a subsequent meeting that the rotation was about dues establishes that he did know. Thus, we conclude that a majority of the Committee members who voted on Page's rotation at the July 9 meeting were aware of Page's dues delinquency at that time.[13] In addition, we conclude that Page's hostility to the Union was generally known, based on the unrebutted testimony of Union Business Manager and Committee member Jerry Lee that "Danny [Page] throughout his career ha[d] been very active in expressing his views about the Union to the district office and to other people and we were aware of his animosity."

Moreover, the timing of the attempted rotation supports our view regarding the Committee's motivation for

[11] Contrary to the judge, we see nothing contradictory in the Union's refusal to take payment from Page's father. It is undisputed that the Union had a policy of requiring members whose dues were more than 6 months in arrears to write letters explaining their situation before being permitted to restore their good standing.

[12] The judge did not base his acceptance of the Committee members' assertions regarding their motivations on demeanor, an analysis of the circumstances, or on any other apparent basis. Cf. *J. N. Ceazan Co.*, 246 NLRB 637, 638 fn. 6 (1979).

[13] The third voting member was Union Business Agent and Committee member John Hooper, who admitted that Page's name appeared on an end-of-the-month list in February 2002 of apprentices who were "in arrears"—i.e., 3 months behind in their dues—with a notation that he would be "dropped" as of June 1, 2002. However, Hooper also testified that Page's name did not recur in March and that Hooper would probably have assumed that Page had paid up.

its conduct. Training Director Carter proposed and the Committee approved Page's rotation 2 days after Bearden had attempted unsuccessfully to contact Page about his dues delinquency. Although Carter stated that he did not learn of Page's dues delinquency until after proposing the rotation, the evidence indicates that Carter received regular updates from the Union regarding the apprentices who were in arrears, and that he had previously spoken with Page about his dues. We find that the timing strongly suggests that Page's dues delinquency motivated the attempted rotation.

In addition, we find that the Respondents' assertion that the Committee attempted to rotate Page as a necessary part of his training is pretextual and supports our finding of unlawful motive. There is no evidence that the Committee imposed a systematic rotation policy; in fact, BAT State Director Brown cited the lack of such a policy when he audited the program shortly before Page's readmission.[14] Moreover, Page was in the last 4 months of his apprenticeship program at the time of his rotation. Brown testified that the purpose of rotation was not served by rotating apprentices in the final months of their training, and Carter admitted that he did not recall the Committee ever rotating any other apprentice at that stage of his training. Finally, Carter admitted that when he suggested to Page's father that Page reapply to the apprenticeship programs, it was with the understanding, in light of Page's prior history, that he could meet his on-the-job training requirements by working at his father's company. Under those circumstances, we find it implausible that Carter would suddenly conclude that Page had to demonstrate the ability to work with other contractors before his training would be complete.

For the foregoing reasons, we find that the General Counsel has demonstrated that Page's dues delinquency and antiunionism were motivating factors in the Committee's attempt to compel Elec Tech to agree to Page's rotation. And, because we have found that the stated reason for the Committee's attempted rotation of Page is pretextual, we conclude that the Respondents have not shown that they would have taken the same action absent these factors. *Limestone Apparel Corp.*, 255 NLRB at 722. Thus, they have failed to rebut the inference of unlawful motive. Accordingly, we find that the attempted rotation violated Section 8(b)(1)(A) and (2).

[14] Carter testified that his proposal to rotate Page was unrelated to the fact that the JATC was then considering adopting a rotation policy, to take effect in September 2002, as a result of the BAT audit. The policy was never actually implemented.

2. Disciplining of Page

Although the Committee ultimately rescinded its attempted rotation of Page, it thereafter disciplined him—delaying his promotion to the next salary level and his completion of his training by 6 months—as a result of his conduct in opposing the rotation. The judge concluded that the Committee did not act unlawfully because its asserted justification for the discipline (Page's noncooperation with and dishonesty towards the Committee) was reasonable, and there was no evidence of unlawful motivation. On the contrary, we find that the Committee's prior unlawful rotation attempt, which gave rise to Page's discipline, and the evidence that the Committee's reasons for the discipline were pretextual demonstrate that this action was also unlawful.

As already stated, the Committee was well aware of Page's dues delinquency. In addition, it is undisputed that Page's hostility towards the Union, which dated back to his dismissal from the apprenticeship program in 1997, was generally known. By the Committee's unlawful attempt to rotate Page 2 days after the Union contacted him about his unpaid dues, the Committee demonstrated animus against him. On July 10, after the attempted rotation, Page announced to Union Representative Hooper that he was no longer interested in union membership.

We conclude that the Respondents' unlawful motive is demonstrated not only by the evidence of hostility towards Page but by the absence of record evidence to support Respondents' stated reason for the discipline. The Respondents assert that Page's alleged noncooperation with the Committee and his dishonesty about advice he had received from BAT State Director Brown motivated the discipline. However, Carter admitted that Page did ultimately cooperate with the Committee by answering its questions after Brown denied telling Page that he could choose not to do so. And although Page apparently misrepresented to the Committee the advice he had received from Brown, dishonesty that may have merited some discipline, the Committee has not imposed such severe discipline in other instances of dishonesty. The only other evidence of an apprentice disciplined for lying shows that he was given only a stern warning, in contrast with the 6-month delay the Committee imposed on Page's completion of the apprenticeship program and his advancement to the next salary level.

Based on the Committee's prior unlawful attempt to rotate Page and its more severe treatment of Page as compared with another apprentice who lied, we conclude that Page's discipline was unlawfully motivated. Moreover, we find that because of the evidence that the Respondents' stated reasons for the discipline were pretex-

tual, the Respondents have not shown that they would have taken the same action absent Page's failure to pay dues and his antiunion views. *Limestone Apparel Corp.*, 255 NLRB at 722. We conclude that the JATC's actions as the Union's agent violated Section 8(b)(1)(A) and (2) of the Act.

AMENDED CONCLUSIONS OF LAW

Substitute the following for paragraphs 3 through 5.

"3. The Nashville Electrical Joint Apprenticeship Training Committee (JATC) is a Federal tax-exempt educational organization providing training to electrician apprentices and is the Respondent Union's agent as alleged in the complaint.

"4. The Respondent Union through its agent, the Respondent JATC, violated Section 8(b)(1)(A) and (2) of the Act by attempting to rotate apprentice Daniel Page to a different employer.

"5. The Respondent Union through its agent, the Respondent JATC, violated Section 8(b)(1)(A) and (2) of the Act by imposing discipline on Page by delaying his scheduled pay increase and his completion of his program by 6 months."

REMEDY

Having found that the Respondents engaged in activities violative of Section 8(b)(1)(A) and (2) of the Act, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Since the Respondents' disciplining of Page by delaying his promotion to the next pay level was discriminatory and may have resulted in a loss of earnings, we shall order the Respondent Union to make Page whole for any loss of earnings he may have suffered as a result of the discrimination against him, in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Moreover, since the Respondents' imposition of a 6-month delay in Page's completion of his training was also discriminatory, we shall order the Respondent JATC to restore Page to the status he would hold but for this unlawful discipline.

ORDER

The Respondent, International Brotherhood of Electrical Workers, Local 429, its agent the Nashville Electrical Joint Apprenticeship Training Committee (JATC), Nashville, Tennessee, and their officers, agents, and representatives, shall

1. Cease and desist from

(a) Attempting to cause apprentices to be rotated from their current employers in retaliation for their union dues delinquency or antiunion views.

(b) Disciplining employees because of their union dues delinquency or antiunion views.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole Daniel Page for any and all loss of earnings suffered by him as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Restore Page to the status he would hold but for his unlawful discipline.

(c) Within 14 days from the date of this Order, remove from their files any reference to the disciplining of Daniel Page and, within 3 days thereafter, notify him that this has been done and that the unlawful action will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at their Nashville, Tennessee locations copies of the attached notice marked "Appendix B."[15] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent Union and the Respondent JATC's authorized representatives, shall be posted by the Union and the JATC and maintained for 60 consecutive days in conspicuous places including all places where notices to apprentices and members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sponsible official on a form provided by the Region attesting to the steps Respondents have taken to comply.

Dated, Washington, D.C. June 30, 2006

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Peter N. Kirsanow Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX B

NOTICE TO MEMBERS AND APPRENTICES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT attempt to cause the rotation of apprentices from their current employers in retaliation for their union dues delinquency or their antiunion views.

WE WILL NOT discipline apprentices because of their union dues delinquency or their antiunion views.

WE WILL NOT, in any like or related manner restrain or coerce employees in the exercise of their rights listed above.

WE WILL make Daniel Page whole, with interest, for any loss of earnings resulting from his unlawful discipline.

WE WILL restore Daniel Page to the status he would hold in the apprenticeship training program but for his unlawful discipline.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discipline of Daniel Page, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 429 AND ITS AGENT NASHVILLE ELECTRICAL JOINT APPRENTICESHIP TRAINING COMMITTEE

Rosalind Eddins, Esq., for the General Counsel.

R. Jan Jennings, Esq. (Branstetter, Kilgore, Stranch and Jennings), of Nashville, Tennessee, for the Respondent.

Martin J. Crane, Esq. (Sherman, Dunn, Cohen, Leifer and Yelig), of Washington, D.C., for the Nashville Joint Apprenticeship Training Committee.

BENCH DECISION AND CERTIFICATION

STATEMENT OF THE CASE

KELTNER W. LOCKE, Administrative Law Judge. I heard this case on March 13 and 14, 2003, in Nashville, Tennessee. After the parties rested, I heard oral argument on March 18, 2003. On March 19, 2003, I issued a bench decision pursuant to Section 102.35(a)(1) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript containing this decision.[1] The conclusions of law and Order are set forth below.

CONCLUSIONS OF LAW

1. Respondent, International Brotherhood of Electrical Workers, Local 429, is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent represents, for purposes of collective-bargaining, employees of one or more employers which meet the Board's jurisdictional standards. Respondent is subject to the Board's jurisdiction in this case.

3. The Nashville Electrical Joint Apprenticeship Training Committee (JATC) is a Federal tax exempt educational organization providing training to electrician apprentices, but is not a labor organization within the meaning of Section 2(5) of the

[1] The bench decision appears in uncorrected form at pp. 601 through 616 of the transcript [omitted from publication]. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this Certification.

Additionally, I note and correct the following errors in the transcript and exhibits:

The transcript, at p. 2, inadvertently identified R. Jan Jennings, Esq., as counsel for the Charging Party and Martin J. Crane, Esq., as counsel for Respondent. As shown in the caption above, Mr. Jennings represented Respondent in this proceeding, and Mr. Crane represented the Nashville Electrical Joint Apprenticeship Training Committee.

Additionally, the court reporting service inadvertently labeled the exhibits of the Joint Area Training Committee (JATC) as "Employer's Exhibits." In accordance with the parties' practice during the hearing, these documents should be referred to as "JATC Exhibits." The documents labeled "Union Exhibits" by the court reporting service are the Respondent's Exhibits.

Act and is not the Respondent's agent, as had been alleged in the complaint.

4. Because the JATC is neither a labor organization within the meaning of Section 2(5) of the Act nor Respondent's agent, assertion of jurisdiction over JATC in this proceeding is inappropriate.

5. Neither Respondent nor JATC violated the Act in any manner alleged in the complaint.

On the findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended[2]

ORDER

The complaint is dismissed in its entirety.

Dated Washington, D.C. April 15, 2003

APPENDIX A

This is a bench decision in the case of International Brotherhood of Electrical Workers Local 429 and Nashville Electrical Joint Apprenticeship Training Committee (JATC) and Danny Page, an Individual, Case 26–CB–4240. This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations.

The Complaint alleges that the Nashville Joint Apprenticeship Training Committee, which I will call the "JATC," is an agent of International Brotherhood of Electrical Workers Local 429, which I will call the "Union." It further alleges that the Union caused the JATC to discriminate against an apprentice, Danny Page, whom I will call "Page" or the "Charging Party," because Page had failed to pay union dues. Because credible evidence does not support these allegations, I recommend that the Complaint be dismissed.

Preliminary Matters

The General Counsel has established that the Charging Party filed and served the charge as alleged in the Complaint. I so find.

The government also has established that the Union is a labor organization within the meaning of Section 2(5) of the Act, and I so find. Based upon the parties' stipulation at hearing, I also find that the government has established that this matter falls within the Board's statutory jurisdiction and meets the Board's discretionary standards for the assertion of jurisdiction.

JATC's Status

The Union represents journeyman and apprentice electricians employed by a number of contractors in the construction industry in middle Tennessee. These construction contractors engage in collective bargaining with the Union through their multiemployer association, the Middle Tennessee Chapter of the National Electrical Contractors Association, which I will call the "Employer Association."

The parties to this collective-bargaining process have established by agreement an Apprenticeship and Training Trust Fund, to be used solely to select and train apprentices to be journeyman electricians. The employers' contributions, in amounts specified in their collective-bargaining agreement with the Union, pay for the trust fund.

A board of trustees manages the trust fund. The Employer Association appoints four board members and the Union appoints an equal number. Should the board split evenly in deciding a question, they may refer the issue to an umpire appointed by the Employer Association and the Union.

The board of trustees must comply with the Employee Retirement Income Security Act of 1974, known as "ERISA." Further, because the trust enjoys tax exempt status under Section 501(c)(3) of the Internal Revenue Code, it is subject to the restrictions applicable to such tax exempt organizations.

Although the board of trustees has responsibility for the trust fund, the creation and operation of the training program itself falls to another body, the Joint Apprenticeship Training Committee, or JATC. The collective-bargaining agreement between the Employer Association and the Union created the JATC. The Employer Association appoints four of the eight JATC members and the Union appoints the other four.

From time to time, the JATC formulates written apprenticeship and training standards for its program. It submits them to the United States Department of Labor, Bureau of Apprenticeship and Training for review. Periodically, the Bureau of Apprenticeship and Training will conduct an audit to be sure that the program follows these standards and complies with applicable laws and regulations. A Department of Labor official also offers the JATC informal guidance in operating the apprenticeship program.

As already noted, the Complaint in this case alleges that the JATC acted as the Union's agent when it took certain actions against apprentice Page. The General Counsel bears the burden of proving, by a preponderance of the evidence, that such a relationship exists.

Neither the trust agreement itself nor any other document in the record establishes such an agency relationship. Although the Union appoints four members of the eight-person board of trustees, it has no right to control the actions of these members in their capacity as trustees. Similarly, although the Union appoints four of the eight JATC members, the record fails to establish that it had any authority to dictate how they would vote as Committee members. Were the right of appointment the same as the right of control, then the federal judiciary itself would not be independent, which is hardly the case.

The documents creating the trust and the JATC clearly contemplate that the apprenticeship program be administered independently, and nothing in these documents confers authority on the administrators to act as agents for the Union. Having concluded that nothing on paper creates an agency relationship, I will look now to how the JATC operates in practice.

The record does not disclose that the Union, or any Union representative, sought to influence the JATC in making decisions about Apprentice Page. Similarly, the record fails to establish that the officials who made these decisions were influenced by the Union or by their own personal opinions about the desirability of union membership. Crediting their testimony, which I conclude is reliable, I find that they were not.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

In sum, I find that the JATC was not the Union's agent at any material time. Therefore, I conclude that no statutory basis exists in this case for the assertion of jurisdiction over the JATC.

What Happened to Page

Apprentices in the JATC's program receive both classroom instruction and on-the-job training. To progress in the program, an apprentice must attend classes. The JATC may impose discipline on apprentices who fail to do so.

In 1995, Daniel Page was an apprentice who received such discipline. Specifically, the JATC's training director, Elbert Carter, sent Page a December 22, 1995 letter stating as follows:

> At the JATC trustees committee meeting on Thursday, December 21, 1995, the trustees' decision regarding your 4 absences from class was that you are to be placed on 3 months probation and that your next pay raise is to be delayed 3 months from the date of your next expected pay raise.

For on-the-job training, the JATC assigns each apprentice to a particular electrical contractor. The contractor evaluates the apprentice's work and sends the evaluation to the JATC.

In early February 1997, Apprentice Page was working for Amprite Electric. This employer discharged Page and sent the JATC an evaluation stating that Page had refused to wear the employer's identification badge. After the JATC considered this matter, its training director sent page a March 26, 1997 letter which stated as follows:

> At the committee meeting of February 27, 1997, the decision made concerning your recent firing from Amprite Electric was that you be sent back to work and that you be placed on probation until the start of the next school year of 1997–1998 and that your next pay raise is delayed 3 months from the date of the next scheduled pay raise. The committee also decided that if problems continue on the job or at school, then you are subject to dismissal from this program.

The JATC then sent Page to work for another electrical contractor. On October 9, 1997, Page's employer, Butcher–United Electric, discharged him. The JATC then terminated Page's apprenticeship. Page requested reconsideration but, at a January 8, 1998 meeting, the JATC decided not to reinstate him.

In August 2001, Page reapplied for admission to the apprenticeship program. He did so because he wanted to work for a company operated by his father, Larry Page. That company, Elec-Tech Electric, had a collective-bargaining agreement with the Union and could only employ apprentices who were enrolled in the JATC program. The JATC allowed Page to return to the apprenticeship program and he began working for Elec–Tech.

Section 14(b) of the National Labor Relations Act allows a state to enact a law prohibiting collective-bargaining agreements which require union membership as a condition of employment. Tennessee has such a law and apprentices do not have to belong to the Union to work for employers in the JATC program.

When Page returned to the apprenticeship program, at first he did not pay union dues. He had not been happy with the Union, believing it should have done more to prevent his termination from the apprenticeship program in 1997. According to Page, in January 2002, one of the Union's business agents stopped Page on his way to class and said, "you need to get your dues straightened out." Page answered, "I know" and the business agent, Gerald Grant, did not say anything else at that time.

In April or May 2002, while Page was on his way to class, the JATC's training director called him into an office. Also present were the Union's business manager, Lindsay Lee (also known as Jerry Lee), and a business agent, Gerald Grant. They raised the subject of Page's nonpayment of dues and told him that if he didn't pay the dues, he would give up the benefits associated with union membership.

Page testified Lee and Grant also told him that if he did not pay the dues, he would be "rotated" to another employer. In other words, if Page failed to pay the dues the JATC would withdraw him from employment with Elec-Tech and assign him to work for another contractor. Lee and Grant deny making such a threat. For reasons discussed later in this decision, I do not conclude that Page's testimony is reliable and I do not credit it. Therefore, I find that Grant and Lee did not threaten to rotate Page's work assignment if he failed to pay his dues.

After this meeting, Page went on to class and the JATC training director, Elbert Carter, went with him. Carter told Page that he did not have to be a union member to work at Elec-Tech, but Carter encouraged Page to belong. Page decided to join the Union. His father paid Page's union dues for the first four months, and Page paid the union dues for an additional three months.

On July 8, 2002, Daniel Page received a call from his father, who reported that he had been contacted by a Union official named Mike Bearden concerning Page's union dues. The next day, Page contacted the Union and spoke with the one union official available at that time. Page told the official about his dissatisfaction with the Union. Page also explained that he had religious objections to union membership and announced that he was resigning his membership. This union officer, John Hooper, referred Page to the business manager, Jerry Lee.

On July 9, 2002, three members of the JATC attended a specially called committee meeting. The minutes of that meeting identify two of them, John Hooper and Gerald Grant, as "FOR I.B.E.W." and the other, Bert Noll, as "FOR N.E.C.A.," the contractors' association. The JATC training director, Elbert Carter, also was present. The minutes of that meeting state, in part:

> The director brought up Danny Page as a possible rotation candidate at this time as he has had a problem stabilizing in an unprotected environment in the past. The director suggested a rotation from his father's shop to assure this committee that Danny can work at other places without conflict. A motion was made and approved to rotate Danny to another contractor.

On July 11, 2002, the JATC's training director, Elbert Carter, sent a fax to Page's employer, announcing that he was removing Page from employment at Elec-Tech effective July 19, 2002. The letter explained that "Danny [Page] is being rotated to another job assignment."

Also on July 11, 2002, Carter sent a certified letter to Daniel Page notifying him that the JATC was removing him from employment at Elec-Tech as of July 19, 2002, that he should report to a specified medical center for a drug screen and that "Once the negative drug test results are reported to our office, we will reassign you to another contractor."

The record suggests that the JATC routinely requires apprentices to undergo a drug test before being assigned to work. The General Counsel does not contend that requiring Page to take such a drug test violated the Act.

The record suggests that in general, employers participating in the apprenticeship program opposed the rotation of apprentices because of the disruptions such rotations caused to their work force. Page's employer was no exception. Elec-Tech sent Carter a July 17, 2002 reply protesting Page's reassignment. "Removal of a properly trained apprentice with established customer relationships," they wrote, did not seem to be a proper method of getting a grip on the problems besetting the industry.

On July 18, 2002, JATC Training Director Carter sent Elec-Tech a reply. Carter wrote, in part, that he was "sorry to inform you that I can not delay Danny's rotation from your organization." The letter then described how Page could appeal the decision and suggested that Page should "request in writing to appear before this committee at their next meeting on July 24, 2002."

Meanwhile, Page's father went to the Union hall to pay his son's dues. However, Union official Gerald Grant told him that Daniel Page would have to write a letter to the Union explaining why he was behind in his payment of dues.

Although Carter's July 18 letter to Elec-Tech had suggested that Daniel Page submit a written request to appear before the JATC on February 24, it appears that Page would not have to do so. Instead, Carter notified Page by July 19 letter that the Committee wanted Page to appear on July 24.

On July 24, the JATC heard from both the father, Larry Page, and the son, Daniel Page. The minutes of that meeting report that after the father spoke, presumably opposing the rotation of his son, the Committee voted twice. The first time, the Committee split 4 to 4, leaving unaffected the decision to rotate Page. The Committee then voted again and unanimously decided to rescind the rotation, resulting in Page remaining assigned to work at Elec-Tech.

Although the JATC minutes are not entirely clear on the sequence of events, it appears that Daniel Page appeared before the Committee after his father did and after the Committee voted to rescind the rotation. The minutes describe Daniel Page's appearance in one paragraph, which states as follows:

> Danny Page appeared before the committee at 3:20 p.m. He informed the committed [sic] that the National Labor Relations Board was reviewing the committee action as to rotation of him for Elec-Tech. The committee was informed that he was instructed by the NLRB's Stacy Smith not to talk to this committee in regard to anything.

The JATC decided to conduct a special meeting the next day. Pursuant to the Committee's request, Daniel Page attended this meeting. In 1997, when the JATC considered the possible dismissal of Page from the apprenticeship program, he had tape recorded some of his interactions with the Committee. So, at the July 25, 2002 meeting, Committee members asked Page if he was taping them. He said he was not.

Page told the Committee, in essence, that he had been advised by the NLRB attorney, Stacy Smith, and the state director of the Bureau of Apprenticeship and Training, Nathaniel Brown, that he, Page, did not have to answer the Committee's questions. The JATC training director then called Brown, who denied making such a statement to Page. When the JATC investigated this matter further, Page did not cooperate.

At a JATC meeting on September 4, 2002, the Committee decided to discipline Page. Training Director Carter notified Page by September 6, 2002 letter, which stated as follows:

> At the Nashville Electrical J.A.T.C. meeting on September 4, 2002, the Members/Trustees found that you did not comply with the letter dated July 11, 2002 (see attached). You also misinformed the Members/Trustees as to what was said by the B.A.T. involving this matter. The Nashville Electrical J.A.T.C. has been given authority by [sic] over the school and all related training issues. This authority has been given to this J.A.T.C. by the IBEW–NECA contractual agreement and the U.S. Department of Labor/Bureau of Apprenticeship Training.
>
> The Members/Trustees are going to delay your next scheduled pay increase six (6) months and you will be on probation for the duration of this program. Any infraction of the policies or standards during this time will result in dismissal.

The government contends that in taking this disciplinary action, as well as in deciding to rotate Page to work for another employer, the JATC acted as the Union's agent. As already discussed, I conclude that the JATC had neither the actual nor apparent authority to act as an agent for the Union. Therefore, I recommend dismissal of the Complaint on that basis.

Additionally, I find that in taking these actions, the Committee members were not motivated at all by Page's nonpayment of union dues or by Page's status as a union member or nonmember. This conclusion flows from the resolution of issues regarding the credibility of the witnesses.

The Tennessee State Director of the Bureau of Apprenticeship and Training, Nathaniel Brown, testified that he never told Page that Page did not have to answer the JATC's questions. For several reasons, I credit Brown. He is a federal official, employed by the United States Department of Labor, testifying in a federal administrative proceeding. As a government official, he had no interest in the outcome of this proceeding. For these reasons, I am quite inclined to believe he told the truth. Moreover, based on my observations of the witnesses, I conclude that Brown's testimony is reliable.

My conclusion that Brown told the truth leads inexorably to the conclusion that when Daniel Page appeared before the Committee, he did not. Therefore, I do not credit Page's testimony to the extent it conflicts with that of other witnesses.

Additionally, when Page's father tried to pay his son's Union dues, the Union would not accept the money. It wanted an explanation from the son. It is difficult to believe that the Union was putting pressure on the JATC to coerce Page into pay-

ing the union dues, or to penalize him for refusing to pay, when the Union itself would not accept the money.

Members of the JATC, as well as its training director, may well have harbored animosity towards Page because of the way he acted in 1997 when the Committee discharged him from the apprenticeship program. In addition to tape recording the meetings, Page threatened to have Training Director Carter fired. However, the record does not establish that Page engendered animosity by engaging in any activities protected by the National Labor Relations Act.

Moreover, the JATC had a legitimate reason for wishing to transfer Page. During his previous apprenticeship, two employers had fired him. One of them reported to the JATC that it discharged Page because he would not wear an ID badge. Receiving this information, the Committee had some reason to doubt Page's maturity.

When Page returned to the apprenticeship program, he worked only for his father's company, where such immaturity might be overlooked. Considering the patterns of employment in the construction industry, where the Union refers workers to many different employers for projects of relatively short duration, the JATC had a very legitimate reason to be concerned that Page could work maturely with any contractor, not just his father's company.

For these reasons, the JATC's decision to rotate Page was reasonable. Similarly, the JATC's decision to discipline Page for lying to the Committee is quite understandable, particularly considering that Page attributed untrue statements to a public official. I find that these lawful reasons, not a concern about payment of Union dues, motivated the JATC.

The record contains very little evidence to suggest unlawful motivation. At one meeting, a Committee member, Bert Noll, did make an offhand comment that "this is about union dues." However, I conclude that he made this comment sarcastically, in response to Page's perseveration on the topic of union dues, a matter of no concern to the Committee.

The timing of the Committee's action also raises some question. However, timing alone, unsupported by other evidence, can lead to the fallacy of logic described by the Latin phrase post hoc ergo propter hoc. There is a difference between sequence and consequence. Although suspicious timing alone may sometimes support a conclusion of unlawful motivation, particularly in the absence of some other, plausible explanation for an action, here, the JATC's asserted reasons, which are lawful, are quite plausible.

Concluding that the JATC acted without unlawful motivation, I recommend that the Complaint be dismissed.

When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, and Order. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

Thank you for the great professionalism and courtesy shown by all counsel during this proceeding. The hearing is closed.